



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CARLA LACEY derivatively on behalf of
SOUTHERN COPPER CORPORATION,

Plaintiff,

v.

GERMÁN LARREA MOTA-VELASCO,
ALFREDO CASAR PÉREZ, XAVIER
GARCÍA DE QUEVEDO TOPETE, LUIS
MIGUEL PALOMINO BONILLA,
GILBERTO PÉREZALONSO CIFUENTES,
CARLOS RUIZ SACRISTÁN, ENRIQUE
CASTILLO SÁNCHEZ MEJORADA,
EMILIO CARRILLO GAMBOA,
ALBERTO DE LA PARRA ZAVALA,
LUIS CASTELAZO MORALES,
ARMANDO ORTEGA GÓMEZ, DANIEL
MUÑIZ QUINTANILLA, JUAN
REBOLLEDO GOUT, LUIS TÉLLEZ
KUENZLER, and GRUPO MÉXICO S.A.B.
DE C.V.,

Defendants,

and

SOUTHERN COPPER CORPORATION,
Nominal Defendant.

C.A. No. 2019/2534/UI

PUBLIC VERSION FILED:

April 29, 2019

VERIFIED DERIVATIVE COMPLAINT

Plaintiff Carla Lacey (“Plaintiff”), derivatively on behalf of nominal defendant Southern Copper Corporation (“Southern Copper” or the “Company”), brings the following Verified Derivative Complaint (the “Complaint”) against

(i) certain current and former directors of Southern Copper (the “Director Defendants”) for breach of contract and for breach of fiduciary duty, and (ii) the Company’s controlling stockholder Grupo México S.A.B. de C.V. (“Grupo México”) for breach of fiduciary duty. The allegations of the Complaint are based on the knowledge of Plaintiff as to herself, including the investigation of counsel, the review of publicly-available information, and the review of certain additional non-public materials provided to Plaintiff and her counsel by and/or on behalf of the Company—including in connection with the prior action captioned *Lacey v. Germán Larrea Mota-Velasco, et al.*, C.A. No. 11779-VCG (Del. Ch.)—as to all other matters.

INTRODUCTION

1. This case arises from Southern Copper’s [REDACTED] violation of its corporate charter (the “Charter”) in connection with billions of dollars of related-party transactions with its controlling stockholder, Grupo México. As set forth in detail below, Grupo México and the Southern Copper board of directors (the “Southern Copper Board” or the “Board”) have worked in concert for decades to systematically violate the Charter’s requirement for prior independent review of all material related-party transactions between those entities, thereby allowing Grupo México to exploit its control over Southern Copper by causing it to enter into numerous grossly unfair transactions that severely damaged the Company.

2. Since at least 2010, Southern Copper has engaged in hundreds of millions of dollars of related-party transactions every year with its controller, Grupo México. From 2010 through the first quarter of 2017 alone, Southern Copper and Grupo México engaged in approximately \$2.5 billion worth of related-party transactions. To protect the Company from abuse by Grupo México, Article Nine of Southern Copper’s Charter (“Article Nine”) requires prior review by an independent committee of the Southern Copper Board of any related-party transaction between Southern Copper (or its affiliates) and Grupo México (or its affiliates) that is material, *i.e.*, worth more than \$10 million.

3. Southern Copper and its directors [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Southern Copper and its directors’ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Specifically, Southern Copper and its directors [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. Through this action (the “Action”), Plaintiff seeks to hold Grupo México and certain current and former members of the Southern Copper Board accountable for their misconduct in connection with the Article Nine Transactions, and remedy the substantial harm flowing therefrom.

THE PARTIES AND RELEVANT NON-PARTIES

7. Plaintiff Carla Lacey (“Plaintiff”) is and has been, at all relevant times, a holder of Southern Copper common stock.

8. Nominal defendant Southern Copper is an integrated producer of copper and other minerals, and operates mining, smelting, and refining facilities in México and Peru. Grupo México currently owns 88.9% of Southern Copper through Americas Mining Corporation (“AMC”), and was Southern Copper’s controlling stockholder at all times relevant to this Action. Southern Copper is incorporated in the State of Delaware with its corporate headquarters located at 1440 East Missouri Avenue, Suite 160, Phoenix, Arizona. Southern Copper’s common stock trades on the New York Stock Exchange (“NYSE”) under the ticker symbol “SCCO.”

9. Defendant Germán Larrea Mota-Velasco (“Germán Larrea”) has served as Southern Copper’s Board Chairman since December 1999 and as a director of the Company since 1999. Germán Larrea previously served as the Company’s Chief Executive Officer (“CEO”) from December 1999 until October 2004. In addition, Germán Larrea has been Chairman, President, and CEO of Grupo México since 1994, and “directly and indirectly controls a majority of the votes of the capital stock of Grupo México.”¹ Germán Larrea is also chairman of the board of directors, CEO and controlling stockholder of Empresarios Industriales de México, S.A. de C.V. (“EIM”), the largest stockholder of Grupo México. Since 1994, Germán Larrea has also served as Chairman and CEO of Minera México, S.A. de C.V. (“Minera”),

¹ Southern Copper Schedule 14A, filed with the SEC on March 21, 2019, at 11.

which was a subsidiary of Grupo México until its acquisition by Southern Copper in 2005, a transaction that resulted in a greater than \$2 billion trial judgment against Grupo México and its affiliated directors.² Since 1997, Germán Larrea has also served as Chairman and CEO of Ferromex, Grupo México’s transportation division. Previously, Germán Larrea served as Grupo México’s Executive Vice Chairman and has been a member of Grupo México’s board of directors since 1981. Germán Larrea is a member of the Demand Board (as defined below).

10. Defendant Oscar González Rocha (“González Rocha”) has served as a member of the Southern Copper Board since November 1999. González Rocha has also served as Southern Copper’s President since December 1999 and as its CEO since October 2004. Between 2003 to 2018, González Rocha received more than \$20.9 million for his service as the Company’s President and CEO. Previously, González Rocha served as the Company’s President, General Director, and Chief Operating Officer (“COO”) from December 1999 to October 2004. In addition, González Rocha serves as CEO and director of Asarco, a Grupo México subsidiary that directly engages in hundreds of millions of dollars of related-party transactions with Southern Copper per year. He also has been President and CEO of AMC—a Grupo México subsidiary that owns 88.9% of Southern Copper—since 2015.

² *In re S. Peru Copper Corp. S’holder Deriv. Litig.*, 52 A.3d 761, 769 (Del. Ch. 2011), *aff’d*, *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213 (Del. 2012) (“*Southern Peru*”).

González Rocha has been a director of Grupo México since April 2002 and was an alternative director of Grupo México from 1998 to April 2002. González Rocha is a member of the Demand Board (as defined below).

11. Defendant Alfredo Casar Pérez (“Casar Pérez”) has served as a member of the Southern Copper Board since October 2006. Casar Pérez has also served as a member of Grupo México’s board of directors since 1997. He has been a member of the board of directors of Ferromex, Grupo México’s transportation division, since 1998 and its CEO since 1999. From 1992 to 1999, Casar Pérez served as General Director and member of the board of directors of Compañía Perforadora México, S.A. de C.V. (“CPM”) and MCC, two wholly-owned Grupo México subsidiaries. Additionally, Casar Pérez serves as Grupo México’s representative on the board of Grupo Aeroportuario del Pacífico, S.A.B. de C.V. (“Grupo Aeroportuario”), and was appointed to that role by Grupo México in 2016 pursuant to Grupo México’s rights as holder of more than 10% of Grupo Aeroportuario’s common stock. Casar Pérez is a member of the Demand Board (as defined below).

12. Defendant Xavier García de Quevedo Topete (“García de Quevedo”) has served as a member of the Southern Copper Board since November 1999. From April 2005 until April 2015 García de Quevedo served as the Company’s COO. Between 2006 and 2015, García de Quevedo received approximately \$9.5 million in total compensation for his service in various executive roles at Southern Copper.

García de Quevedo began his professional career at Grupo México in 1969 and has worked as an executive for Grupo México and its subsidiaries for over 40 years. Since November 2014, García de Quevedo has served as the President of Grupo México's infrastructure division, and he has served as a Grupo México director since April 2002. Prior to these roles, García de Quevedo served as President and CEO of AMC from September 2007 through October 2014. From December 2009 to June 2010, he served as Chairman and CEO of Asarco. He was previously President of Asarco from November 1999 to September 2001.

13. García de Quevedo has been an integral part of Grupo México's growth over the past several decades. He was responsible for developing Grupo México's integration strategy and was directly responsible for the development of Grupo México's copper smelter, refinery, and precious metal and rod plants. He also headed the process for the acquisition of Grupo México's railroad concessions, the formation of Ferromex, and the partnership between Ferromex and Union Pacific. García de Quevedo is a member of the Demand Board (as defined below).

14. Defendant Luis Miguel Palomino Bonilla ("Palomino") has served as a member of the Southern Copper Board since March 2004. Since March 2004 Palomino has also been a member of the Audit Committee, which was tasked with undertaking the prior independent review of material related-party transactions as required by Article Nine. Between 2006 and the first quarter of 2017, Palomino and

the Audit Committee allowed Southern Copper to enter into dozens of material related-party transactions that violated Article Nine's prior independent review requirement. Palomino was also a member of the Special Committee that in 2004 approved Southern Copper's (then Southern Peru) purchase of Minera México from Grupo México, which resulted in a judgment of over \$2 billion against Grupo México and its affiliated directors for breaching their fiduciary duties owed to Southern Copper.³ Palomino is a member of the Demand Board (as defined below).

15. Defendant Gilberto Pérezalonso Cifuentes ("Pérezalonso") has served as a member of the Southern Copper Board since June 2002. Since June 2002, Pérezalonso has also been a member of the Audit Committee, which was tasked with undertaking the prior independent review of material related-party transactions as required by Article Nine. Between 2006 and the first quarter of 2017, Pérezalonso and the Audit Committee allowed Southern Copper to enter into dozens of material related-party transactions that violated Article Nine's prior independent review requirement. Pérezalonso was also a member of the Special Committee that in 2004 approved Southern Copper's purchase of Minera México from Grupo México.⁴

16. From 2005 through 2007, Pérezalonso served as a consultant to the Presidency of Grupo Televisa S.A. and as a member of its Board and Executive

³ *Southern Peru*, 52 A.3d at 770.

⁴ *Id.*

Committee. At the time, Germán Larrea also served as a director of Grupo Televisa S.A. (from 1999 through 2014), and as chairman of its compensation committee, such that Germán Larrea had influence over the compensation paid to Pérezalonso in his consultancy and executive role. Pérezalonso also previously served as a member of the Advisory Council of Banco Nacional de México S.A. de C.V., a company for which Germán Larrea at the time served on its board of directors.

17. Defendant Carlos Ruiz Sacristán (“Ruiz Sacristán”) has served as a member of the Southern Copper Board since February 2004. Ruiz Sacristán served as Chairman of the Board at Grupo México subsidiary Asarco from 2005 to 2010. Ruiz Sacristán was also a member of the Special Committee that in 2004 approved Southern Copper’s purchase of Minera México from Grupo México.⁵ Ruiz Sacristán is a member of the Demand Board (as defined below).

18. Defendant Enrique Castillo Sánchez Mejorada (“Castillo Sánchez Mejorada”) has served as a member of the Southern Copper Board since 2010. Since 2013, Castillo Sánchez Mejorada has also served as a member of the Audit Committee, which was tasked with undertaking the prior independent review of material related-party transactions as required by Article Nine. Between 2013 and the first quarter of 2017 Castillo Sánchez Mejorada and the Audit Committee

⁵ *Id.*

allowed Southern Copper to enter into a multitude of material related-party transactions that violated Article Nine's prior independent review requirement.

19. From April 2012 until April 2014, Castillo Sánchez Mejorada served on the board of directors of Grupo Aeroportuario, a Mexican airport operator in which Grupo México has been the largest public stockholder since 2011. Castillo Sánchez Mejorada is a member of the Demand Board (as defined below).

20. Director Emilio Carrillo Gamboa ("Carrillo Gamboa") served as a member of the Southern Copper Board from May 2003 until April 2018. From May 2003 until April 2018, Carrillo Gamboa also served as a member of the Audit Committee, which was tasked with undertaking the prior independent review of material related-party transactions as required by Article Nine. Between 2006 and the first quarter of 2017, Carrillo Gamboa and the Audit Committee allowed Southern Copper to enter into dozens of material related-party transactions totaling several billion dollars that violated Article Nine's prior independent review requirement.

21. Carrillo Gamboa has also been a director and a member of Grupo México's audit committee since 2004. Additionally, Carrillo Gamboa is chairman of the board of The México Fund, Inc. ("The México Fund"), an investment management company that invests heavily in Grupo México, which is The México Fund's fourth largest investment.

22. Director Alberto de la Parra Zavala (“de la Parra”) served as a member of the Southern Copper Board from July 2007 to April 2013. Between 2007 and 2012, de la Parra received director fees from Southern Copper totaling \$431,432.⁶ From 2007 through 2012, de la Parra served as General Counsel to Grupo México and Corporate Secretary of the board of directors of Grupo México and some of its subsidiaries.

23. Defendant Luis Castelazo Morales (“Castelazo Morales”) served as a member of the Southern Copper Board from September 2010 to June 2016. Between 2010 and 2016, Castelazo Morales received director fees from Southern Copper totaling \$503,370.⁷ Castelazo Morales has served as a non-independent director of Grupo México since 2016. He is also Chairman of the board of directors and Chief Executive Officer of EIM, a company which is controlled by Germán Larrea and is the largest stockholder of Grupo México.

24. Defendant Armando Ortega Gómez (“Ortega Gómez”) served as a member of the Southern Copper Board from February 2005 to October 2010. Previously, between April 2002 and October 2010, Ortega Gómez served as the

⁶ de la Parra received director fees from Southern Copper of \$54,120 (2007), \$81,900 (2008), \$68,552 (2009), \$72,776 (2010), \$87,380 (2011), and \$66,744 (2012).

⁷ Castelazo Morales received director fees from Southern Copper of \$46,508 (2010), \$87,380 (2011), \$83,744 (2012), \$70,184 (2013), \$78,682 (2014), \$82,844 (2015), and \$54,028 (2016).

Company's General Counsel, Vice President, Legal and Secretary. Ortega Gómez served as General Counsel for Grupo México from May 2001 to February 2007.

25. Defendant Daniel Muñoz Quintanilla ("Muñoz") served as a member of the Southern Copper Board from May 2008 to July 2018. He also served as Executive Vice President of the Company from April 2016 to July 2018. Between 2008 and 2018, Muñoz received director fees from Southern Copper totaling \$882,282⁸ and executive compensation for serving as the Company's Executive Vice President of \$1,362,415.⁹ Muñoz was Grupo México's CFO from April 2007 to July 2018.

26. Defendant Juan Rebolledo Gout ("Rebolledo") served as a member of the Southern Copper Board from May 2003 to September 30, 2015. Between 2006 and 2014, Rebolledo received director fees from Southern Copper totaling \$639,072.¹⁰ He has served as International Vice President of Grupo México since 2001.

⁸ Muñoz received director fees from Southern Copper of \$70,900 (2008), \$68,552 ('09), \$78,776 (2010), \$87,380 (2011), \$ \$77,744 (2012), \$70,184 (2013), \$72,682 (2014), \$82,844 (2015), \$76,028 (2016), \$89,880 (2017), and \$107,312 (2018).

⁹ Muñoz's compensation for serving as Executive Vice President at Southern Copper was \$563,092 (2016), \$509,963 (2017), and \$289,360 (2018).

¹⁰ Rebolledo received director fees from Southern Copper of \$62,734 (2006), \$76,120 (2007), \$44,900 (2008), \$68,552 (2009), \$78,776 (2010), \$87,380 (2011), \$77,744 (2012), \$70,184 (2013), \$72,682 (2014).

27. Defendant Luis Téllez Kuenzler (“Téllez”) served as a member of the Southern Copper Board from March 2010 to April 2011.

28. Defendant Grupo México owns 100% of AMC, which, in turn, owns 88.9% of Southern Copper common stock as of December 31, 2018. Germán Larrea and his family control a majority of the capital stock of Grupo México. Grupo México’s headquarters is located at Edificio Parque Reforma, Campos Eliseos No. 400, 12th Floor, Col. Lomas de Chapultepec, México City, México 11000.

29. The defendants listed in paragraphs 9 through 27 above are collectively referred to herein as the “Director Defendants.”

30. The defendants listed in paragraphs 9 through 28 above are collectively referred to herein as the “Defendants.”

I. SUBSTANTIVE ALLEGATIONS

A. Grupo México Controls Southern Copper

31. Grupo México is a Mexico-based holding company whose principal purpose is holding shares of stock in other corporations engaged in: (i) mining, processing, and purchase and sale of minerals and other products; (ii) construction and infrastructure; and (iii) railway and other related transportation services.

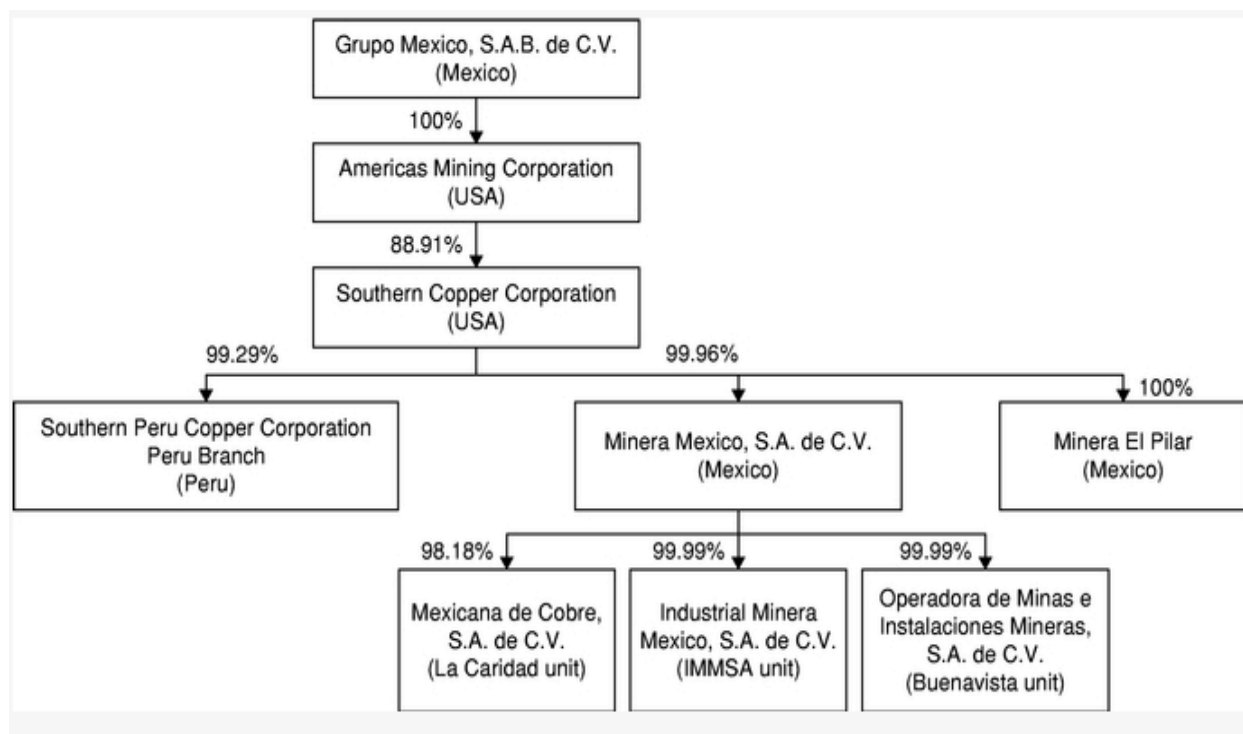
32. Germán Larrea and his family (the “Larrea Family”) control a majority of the capital stock of Grupo México. Grupo México was founded in 1942 by Jorge Larrea Ortega, Germán Larrea’s father. In 1994, Jorge Larrea Ortega handed control

of Grupo México to Germán Larrea, who has also served as Grupo México's Chairman and CEO since 1994.

33. Through his majority ownership of Grupo México, Germán Larrea has controlled Southern Copper since 1999, when Grupo México acquired all of the outstanding common stock of Asarco through a tender offer transaction. At the time, a majority of the stock of Southern Copper (then known as Southern Peru Copper Corporation), was owned and controlled by Southern Peru Holdings Corporation, an Asarco subsidiary. From November 17, 1999 through present, Grupo México has controlled Southern Copper through its ownership of significantly more than 50% of the Company's equity and voting power.

34. As of December 31, 2018, Grupo México, through its wholly-owned subsidiary AMC, owned 88.9% of Southern Copper's capital stock.

35. The following chart depicts Southern Copper's organizational structure as of December 31, 2018:



36. Southern Copper concedes in its public filings that Grupo México controls the Company. According to Southern Copper’s Form 10-K filed with the SEC on March 1, 2019:

We are controlled by Grupo México, which exercises control over our affairs and policies and whose interests may be different from yours.

At December 31, 2018, Grupo México owned indirectly 88.9% of our capital stock. Certain of our and Minera México’s officers and directors are also directors and/or officers of Grupo México and/or of its affiliates. We cannot assure you that the interests of Grupo México will not conflict with our minority stockholders.

Grupo México has the ability to determine the outcome of substantially all matters submitted for a vote to our stockholders and thus exercises control over our business policies and affairs, including the following:

the composition of our Board of Directors and, as a result, any determinations of our Board with respect to

our business direction and policy, including the appointment and removal of our officers;

determinations with respect to mergers and other business combinations, including those that may result in a change of control;

whether dividends are paid or other distributions are made and the amount of any dividends or other distributions;

sales and dispositions of our assets;

the amount of debt financing that we incur; and the approval of capital projects.

(Underlined emphasis in original and other emphasis added).

37. Likewise, Southern Copper's Schedule 14A, filed with the SEC on March 21, 2019, states:

Our Company was acquired in late 1999 by Grupo México, our indirect majority stockholder, which owns 88.9% of our stock as of December 31, 2018. Because *we are a controlled company* as defined by the NYSE we do not have a Compensation Committee comprised entirely by independent directors.

(Emphasis added).

38. Additionally, as explained throughout this Complaint, Southern Copper engages in hundreds of millions of dollars of related-party transactions per year with Grupo México and Grupo México-related entities, all of which constitute further indicia of control over Southern Copper and its operations. As detailed in Southern Copper's most recent Form 10-K, filed with the SEC on March 23, 2019, in the past three years alone, Southern Copper and Grupo México have engaged in over \$1.7 billion of related-party transactions:

	<u>2018</u>	<u>2017</u>	<u>2016</u>
<i>Purchase activity</i>			
Asarco LLC	\$ 37.2	\$ 37.2	\$ 30.3
AMMINCO	8.0	—	—
Compania Perforadora México S.A.P.I. de C.V. and affiliates	—	—	0.3
Eolica El Retiro, S.A.P.I. de C.V.	3.6	3.3	2.0
Ferrocarril Mexicano, S.A. de C.V.	41.7	43.5	42.7
Grupo México	10.1	14.0	13.8
MGE	200.1	223.7	233.8
México Proyectos y Desarrollos S.A. de C.V. and affiliates	79.8	152.9	76.0
Total purchases	<u>\$380.5</u>	<u>\$474.6</u>	<u>\$398.9</u>
<i>Sales activity</i>			
Asarco LLC	\$ 81.8	\$ 96.2	\$ 37.1
AMMINCO	0.3	—	—
Compania Perforadora México S.A.P.I. de C.V. and affiliates	—	0.2	0.6
Grupo México	—	0.2	0.6
México Proyectos y Desarrollos S.A. de C.V. and affiliates	—	—	0.4
Operadora de Generadoras de Energia México S.A. de C.V	—	—	0.1
MGE	68.2	101.0	95.9
Total sales	<u>\$150.3</u>	<u>\$197.6</u>	<u>\$134.7</u>

39. Grupo México's control and domination over Southern Copper is further evidenced by then-Chancellor Strine's finding in *Southern Peru* that Grupo

México—which at the time owned *less* Southern Copper common stock—was the Company’s controlling stockholder.¹¹

B. Article Nine of Southern Copper’s Charter Exists to Protect the Company and its Public Stockholders from Abuse by Grupo México

40. Enacted in 1995 and restated in 2005, Southern Copper’s Charter includes Article Nine, which requires prior review of material related-party transactions by a committee of independent Southern Copper directors. Article Nine of the Southern Copper Charter states, in its entirety, the following:

The Corporation shall not engage in any Material Affiliate Transaction unless it has been the subject of *prior review* by a committee of the Board of Directors with at least three members, each of whom is an Independent Director (any such committee, an ‘Affiliate Transaction Committee’). For purpose of this ARTICLE NINE, a ‘Material Affiliate Transaction’ shall mean any transaction, business dealing or material financial interest in any transaction, or any series of related transactions, between Grupo México or one of its affiliates (other than the Corporation or any of the Corporation’s subsidiaries), on the one hand, and the Corporation or one of the Corporation’s subsidiaries, on the other hand, that involves consideration of more than \$10,000,000 in the aggregate.

(Emphasis added).¹²

¹¹ 52 A.3d at 765.

¹²



41. As defined and detailed *infra*, the Article Nine Transactions consisting of: (i) the construction of the New BDC Tailings Dam; (ii) the construction of Phase 2 of Dam 7; (iii) the demolition and soil remediation of the Former IMMSA Metallurgical Complex; (iv) the Minerals Contracts; and (v) the Transportation Contracts, represent over a billion dollars of related-party transactions between Grupo México and its affiliates, on the one hand, and the Company and its affiliates, on the other hand. Each of the Article Nine Transactions is a related-party transaction worth greater than \$10 million and therefore triggers Article Nine's *prior* independent review requirement. Yet *none* of the Article Nine Transactions were subjected to any prior review or approval by the Board or any committee thereof, let alone prior review by a committee of Southern Copper's independent directors as mandated by the Charter.

C. Defendants' [REDACTED] Systematic Violations of Article Nine of the Company's Charter

42. [REDACTED], from 2006 through the first quarter of 2017, Grupo México and Southern Copper entered into several dozen material related-party transactions in violation of Article Nine's prior independent review requirement.¹³

¹³ As explained *infra*, the only related-party transaction of which Plaintiff is aware that *complied* with Article Nine's requirement for prior independent review and approval was Southern Copper's acquisition of Minera from Grupo México in 2005,

43. Defendants' [REDACTED]

prior litigation (previously defined as the “Power Plant Litigation”). On December 7, 2015, Plaintiff filed in this Court her complaint in the Power Plant Litigation against Grupo México, Southern Copper and its directors (the “Power Plant Litigation Complaint”). Plaintiff’s Power Plant Litigation Complaint challenged three related-party transactions whereby Grupo México stripped highly profitable power plants from Southern Copper and then sold the power from those very plants back to Southern Copper. Plaintiff’s Power Plant Litigation Complaint alleged, among other things, that: (i) Grupo México and Southern Copper’s directors breached their fiduciary duties to Southern Copper; and (ii) that Southern Copper’s directors violated Article Nine.

44. During the Power Plant Litigation, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

After extensive litigation, on January 4, 2019, this Court approved an investor-level settlement of the Power Plant Litigation, pursuant to which Grupo México agreed to pay \$50

a transaction so unfair to Southern Copper that it resulted in a judgment of over \$2 billion against Grupo México and its affiliated directors for breaching their fiduciary duties. *See Southern Peru*, 52 A.3d 761.

million¹⁴ directly to Southern Copper's minority stockholders in exchange for the release of only claims related to the three transactions challenged in that litigation.¹⁵

45. During the discovery phase of the Power Plant Litigation, Plaintiff requested in an interrogatory ("Interrogatory 19") that Southern Copper: (i) identify "***all*** related-party transactions entered into between [Southern Copper] on the one hand and Grupo México (and/or Grupo México affiliates) on the other hand that involved consideration of more than \$10,000,000 in the aggregate;" and (ii) state whether those transactions were subjected to prior review by a committee of at least three Southern Copper's independent directors.

46. After Southern Copper and its directors refused to provide Plaintiff any information in response to Interrogatory 19, Plaintiff filed a motion to compel (the

¹⁴ Given Southern Copper's minority stockholders' 11% aggregate ownership of common stock in the Company, the implied derivative value of the Settlement was substantially larger than \$50 million. *See Lacey v. Larrea Mota-Velasco, et al.*, C.A. No. 11779-VCG, Dkt. No. 161, Settlement Hr'g Tr. at 19:9-18.

¹⁵ Specifically, Plaintiff released her claims related to: (i) Southern Copper's March 2012 sale to Grupo México of México Generadora de Energía ("MGE"), an indirect Southern Copper subsidiary that owned two partially completed power plants at the La Caridad Mine; (ii) a contract entered into between Southern Copper and Grupo México in December 2012 pursuant to which Southern Copper agreed to purchase power from MGE for 20 years (the "Power Purchase Agreement"); and (iii) a December 2012 amendment to an existing \$350 million line of credit extended by Southern Copper to MGE that, *inter alia*, subordinated MGE's debt obligation.

48. After responding to Interrogatory 19, Southern Copper produced supplemental documents and information to Plaintiff related to the identified transactions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹⁸

49. The related-party transactions between Southern Copper and Grupo México set forth *infra* at ¶¶ 50-102 (previously defined as the “Article Nine Transactions”) did not comply with Article Nine and were unfair to Southern Copper.¹⁹

¹⁸ After production of the additional documents and information related to these transactions, Plaintiff and defendants in the Power Plant Litigation entered into an agreement (the “Tolling Agreement”) to toll all limitations periods applicable to any potential action that could be brought by Plaintiff related to prior violations of Article Nine by Southern Copper and its directors, including with respect to the 23 above-described transactions. Pursuant to paragraph 2 of the Tolling Agreement, Plaintiff provided notice to defendants of termination on March 22, 2019, and the Tolling Agreement terminated 30 days thereafter on April 22, 2019.

¹⁹ [REDACTED]

1. The New Tailings Dam at Buenavista del Cobre

50.

[Redacted text block]

51.

[Redacted text block]

[REDACTED]

[REDACTED]

52.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53.

[REDACTED]

[REDACTED]

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[REDACTED]

[Redacted]

[Redacted]

54. [Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

55. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

a) The Contract for Phase 1 of the New BDC Tailings Dam Was Unfair to Southern Copper

56.

[Redacted text block]

57.

[Redacted text block]

[REDACTED]

58.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

59.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

b) The Contract for Phase 2 of the New BDC Tailings Dam Was Unfair to Southern Copper

60.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

61. [Redacted text]

[Redacted text block]

62. [Redacted text]

[Redacted text block]

63. [Redacted text]

[Redacted text block]

[REDACTED]

64. [REDACTED]

[REDACTED]

³¹ See Sterling Construction Company, Inc. (“Sterling”) Form 10-K, filed with the SEC on March 6, 2018, at 8 (“Fixed unit price contracts are generally used in competitively-bid public civil construction contracts. Contractors under fixed unit price contracts are generally committed to provide all of the resources required to complete the contract for a fixed price per unit.”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³² See Adrienne Watt, *Project Management*, Chapter 13 (Procurement), available at <https://opentextbc.ca/projectmanagement/chapter/chapter-13-procurement-management-project-management/> (last accessed Apr. 22, 2019) (“The risks associated with fixed price contracts are the costs associated with project change. If a change occurs on the project that requires a change order from the contractor, the price of the change is typically very high. Even when the price for changes is included in the original contract, changes on a fixed-price contract will create higher total project costs than other forms of contracts because the majority of the cost risk is transferred to the contractor, and most contractors will add a contingency to the contract to cover their additional risk.”).

³³ See Juan Rodriguez, *Time and Materials Contracts*, THE BALANCE SMALL BUSINESS, Dec. 17, 2018, available at <https://www.thebalancesmb.com/time-and-materials-contract-844534> (last accessed Apr. 22, 2019).

³⁴ See Sterling Form 10-K, filed with the SEC on March 6, 2018, at 8 (“In a cost-plus contract, the owner of a project generally agrees to pay the cost of all of the contractor’s labor, subcontracts and materials plus an amount for contractor overhead and profit If actual costs are lower than the estimate, the owner

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. The Contract for Phase 2 of the Curtain for Tailings Dam 7 at La Caridad Was Unfair to Southern Copper

66. Southern Copper owns a copper mine in Sonora, México (the “La Caridad Mine”). Since the beginning of its modern operation in 1979, the La Caridad Mine, like other similar mines of its size, has produced a significant amount of tailings that required the construction of several tailings dams. One of those tailings dams, Tailings Dam 7 at the La Caridad Mine (“Dam 7”), was originally constructed between 1981 and 1985.

benefits from the cost savings. If actual costs are higher than the estimate, the owner bears the economic burden of the additional costs.”).

³⁵ See M. Amado, *et al.*, *Project Management for Instructional Designers*, at Chapter 9.5, available at <https://pm4id.org/chapter/9-5-selecting-the-type-of-contract/> (last accessed Apr. 22, 2019) (“To minimize the risk to the project, the contract typically includes a not-to-exceed amount, which means the contract can only charge up to the agreed amount.”).

67. The construction of the original curtain of Dam 7 at the La Caridad Mine was completed in 1985, and constituted Phase 1 of Dam 7. By 2010, however, Mexicana de Cobre, S.A de C.V. (“Mex de Cobre”) needed to reinforce the curtain of Dam 7 to accommodate the weight of the ever-increasing tailings from the La Caridad Mine (“Phase 2 of Dam 7”). [REDACTED]

[REDACTED]

[REDACTED]

68. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

69. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

70.

[REDACTED]

71.

[REDACTED]

[REDACTED]

[REDACTED]

72.

[REDACTED]

[REDACTED]

3. Dismantling, Demolition, Removal, and Remediation of the Former IMMSA Metallurgical Complex

73. Industrial Minera México, S.A. de C.V. (“IMMSA”), a subsidiary of Southern Copper, operated a Metallurgical Complex (the “Former IMMSA Metallurgical Complex”) in the city of San Luis Potosí, Mexico that was over 100 years old. At various times during this period, the Former IMMSA Metallurgical Complex operated as a: (i) lead smelter; (ii) arsenic plant; and, finally, (iii) a copper

smelter. These activities generated metallurgical waste that contaminated the soil beneath the complex. As urban growth in San Luis Potosí expanded, IMMSA decided to remediate the soil and repurpose the plot for residential and/or commercial use.

74.

[REDACTED]

75.

[REDACTED]

[Redacted]

[Redacted]

76. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

a) The IMMSA Phase 1 Contract Was Unfair to Southern Copper

77. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

78. [Redacted]

[Redacted]

[Redacted]

79.

[Redacted]

80.

[Redacted]

b) The IMMSA Phase 2 Contract Was Unfair to Southern Copper

81.

[Redacted]

[REDACTED]

82.

[REDACTED]

[REDACTED]

[REDACTED]

83. [REDACTED]

84. [REDACTED]

4. The Minerals Contracts

85. Grupo México acquired Asarco in 1999. By 2005, Asarco was suffering from various financial difficulties and entered into Chapter 11 bankruptcy. Asarco emerged from bankruptcy at the end of 2009. Soon after, in an effort to bolster the Asarco's struggling business, [REDACTED]

86.

[REDACTED]

87.

[REDACTED]

³⁸ Southern Copper subsidiary Operadora de Minas e Instalaciones Mineras, S.A. de C.V. also contracted with Grupo México/Asarco for raw materials.

[Redacted]

[Redacted]

88. [Redacted]

[Redacted]

[Redacted]

a) The Mineral Sales Contracts Were Unfair to Southern Copper

89. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

90. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

91. [Redacted]

[Redacted]

[Redacted]

[REDACTED]

b) The Mineral Purchase Contracts Were Unfair to Southern Copper

92. [REDACTED]

93. [REDACTED]

[REDACTED]

[REDACTED]

94. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Transportation Contracts for the Use of Grupo México's Rail Lines

95. Grupo México has a near monopoly over the railways in México, owning over 57% of the total available rail lines and accounting for over 60% of the total rail freight market in México. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

96. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁰ The Southern Copper subsidiaries that contract with Ferromex primarily include Mex de Cobre, Operadora de Minas e Instalaciones Mineras, S.A. de C.V., IMMSA, Operadora de Minas de Narcozi S.A. de C.V. and Metalurgical del Cobre.

[REDACTED]

97.

[REDACTED]

a) The Transportation Services Contracts were unfair to Southern Copper

98.

[REDACTED]

.41

99.

[REDACTED]

⁴¹ Despite the monopolistic market conditions, other than setting maximum tariffs Mexico does not regulate or limit what Grupo México chooses to charge customers for rail service.

[REDACTED]

b) The Operational Efficiency Contract Was Unfair to Southern Copper

100. [REDACTED]

101. [REDACTED]

[REDACTED]

102.

[REDACTED]

[REDACTED]

[REDACTED]

D. After Plaintiff Uncovers [REDACTED] Violations of Article Nine, the Company Forms a Sub-Committee to Purportedly Investigate the Article Nine Transactions

103. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

104. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

105. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

106. [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted text block]

- [Redacted text block]

- [Redacted text block]

- [Redacted text block]

- [Redacted text block]

- [Redacted text block]

- [Redacted text block]

- [Redacted text block]

[REDACTED]

107. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

108. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

109. [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

110. As of the date of this Complaint, [REDACTED]

[REDACTED]⁴⁵

II. DERIVATIVE ALLEGATIONS

111. Plaintiff brings this Action derivatively to redress injuries suffered by the Company as a direct result of breaches of fiduciary duties and other misconduct by the Director Defendants and Grupo México, the Company's controlling stockholder.

112. Plaintiff currently owns Southern Copper stock and has been, at all relevant times, a stockholder of Southern Copper common stock.

113. Plaintiff will adequately and fairly represent the interests of Southern Copper and its stockholders in enforcing and prosecuting their rights, and has retained counsel competent and experienced in stockholder derivative litigation.

DEMAND ON THE BOARD IS EXCUSED AS FUTILE

114. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

⁴⁵ However, in an apparent attempt to infuse some much-needed independence into the Board [REDACTED], Southern Copper added two new independent directors to the Board: (i) Rafael A. Mac Gregor Anciola ("Mac Gregor"), who began serving on the Board in July 2017; and (ii) Vicente Ariztegui Andreve ("Ariztegui Andreve"), who began serving on the Board in April 2018.

115. Plaintiff has not made a demand on the Demand Board to institute this Action against the Defendants. Such demand would be futile because the Demand Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this Action.

116. The current Southern Copper Board (*i.e.*, the Demand Board) consists of 10 directors: Germán Larrea, González Rocha, Casar Pérez, García de Quevedo, Palomino, Pérezalonso, Ruiz Sacristán, Castillo Sánchez Mejorada, Ariztegui Andreve, and Mac Gregor. A majority of these directors are incapable of disinterestedly and independently considering a demand to commence and vigorously prosecute this Action.

117. Such a demand would be futile and useless, and is thereby excused, for at least three reasons: (i) a majority of the Demand Board was comprised of individuals who were interested in each of the Article Nine Transactions and/or not independent of Grupo México, which was interested in the Article Nine Transactions; (ii) the majority of the Demand Board faces a substantial likelihood of liability on the Article Nine Transactions; and (iii) Grupo México is Southern Copper's controlling stockholder and stood on both sides of the Article Nine Transactions such that each of the Article Nine Transactions is subject to entire fairness.

III. A MAJORITY OF THE DEMAND BOARD WAS EITHER INTERESTED IN THE ARTICLE NINE TRANSACTIONS OR NOT INDEPENDENT OF GRUPO MÉXICO

118. *Defendant Germán Larrea* is not able to independently and disinterestedly determine whether to initiate and prosecute claims relating to the Article Nine Transactions. *First*, Germán Larrea is the controlling stockholder of Grupo México, Southern Copper's counterparty on each of the Article Nine Transactions. Germán Larrea is also Grupo México's Chairman, President, and CEO. It would be against his own (and his family's) economic interest to initiate and pursue derivative claims challenging the Article Nine Transactions, which were unfairly beneficial to him and Grupo México. Thus, initiating and pursuing claims challenging the Article Nine Transactions would be antithetical to not only Germán Larrea's personal financial interests, but also his fiduciary duty to advance the interests of Grupo México.

119. *Defendant González Rocha* is not able to independently and disinterestedly determine whether to initiate and prosecute claims relating to the Article Nine Transactions. Like Germán Larrea, González Rocha is a dual fiduciary that has interests and obligations antithetical to challenging the Article Nine Transactions. González Rocha serves as CEO and director of Asarco, and President and CEO of AMC, a holding company of Grupo México. As of December 31, 2018, González Rocha owned approximately 3.1 million shares of Grupo México common

stock.⁴⁶ Thus, he has motivations and fiduciary duties that would not permit him to independently or disinterestedly challenge the Article Nine Transactions that benefitted Grupo Mexico at the expense of Southern Copper. And because González Rocha is directly and materially interested in each of the Article Nine Transactions, any amendment or rescission of the Article Nine Transactions favorable to Southern Copper could be financially detrimental to his holdings of Grupo México stock.

120. Further, González Rocha has been Southern Copper's President and CEO for more than 20 years and 15 years, respectively. Between 2003 to 2018, González Rocha received more than \$20.9 million for his service as the Company's President and CEO.⁴⁷ If he were to initiate and prosecute claims adverse to the interests of Grupo México, he would likely imperil his principal source of employment and income.⁴⁸

⁴⁷ González Rocha's compensation for serving as Southern Copper's President and CEO was \$91,364.00 (2003), \$281,273.00 (2004), \$427, 128.00 (2005), \$1,516,089.00 (2006), \$1,385,695.00 (2007), \$1,179,360.00 (2008), \$1,394,315.00 (2009), \$2,178,926.00 (2010), \$1,515,617.00 (2011), \$1,567,002.00 (2012), \$1,603,307.00 (2013), \$1,535,285.00 (2014), \$2,037,121.00 (2015), \$1,460,944.00 (2016), \$1,233,921.00 (2017), and \$1,504,764.00 (2018).

⁴⁸ Indeed, Southern Copper's Form 10-K filed with the SEC on March 1, 2019, confirms that "Grupo Mexico has the ability to determine the outcome of substantially all matters submitted for a vote to our stockholders," which includes "the composition of [the Company's] Board of Directors and, as a result, any determinations of our Board of Directors" or "*the appointment and removal of [the Company's] officers.*" (Emphasis added).

121. *Defendant Casar Pérez* is also not able to independently and disinterestedly determine whether to initiate and prosecute claims alleged herein because he too is a dual fiduciary that stood on both sides of the challenged Article Nine Transactions. Casar Pérez has served as a director of Grupo México since 1997, and is a director and CEO of Ferromex, the Grupo México subsidiary that is Southern Copper's counterparty in the Transportation Contracts. In total, Casar Pérez has been an executive of Grupo México and its subsidiaries in various executive positions for more than 21 years.⁴⁹ As of December 31, 2018, Casar Pérez owned 3.3 million shares of Grupo México common stock.⁵⁰ Thus, Casar Pérez had and continues to have a personal stake in, and fiduciary duty to advance, the interests of Grupo México. This renders him incapable of objectively investigating or prosecuting the claims arising from the Article Nine Transactions which have benefited him and Grupo México at the expense of the Company.

122. *Defendant García de Quevedo* is also a dual fiduciary and cannot objectively and disinterestedly consider a demand to initiate and aggressively prosecute the derivative claims asserted herein. García de Quevedo has served in numerous leadership positions at Grupo México for over 40 years. García de

⁴⁹ Additional evidence of Grupo México's trust in Casar Pérez to represent its interests can be gleaned from his appointment by Grupo México as its one stockholder representative on the Grupo Aeroportuario Board.

⁵⁰ See Southern Copper Schedule 14A, filed with the SEC on Mar. 21, 2019, at 11.

Quevedo has been a director of Grupo México since April 2002 and is currently the President of Grupo México's infrastructure division. As of December 31, 2018, García de Quevedo owned 1,745,750 shares of Grupo México common stock worth over \$5 million. Thus, García de Quevedo had and continues to have a personal stake in, and fiduciary duty to advance, the interests of Grupo México. These render him incapable of objectively considering investigation or prosecution of the claims arising from the Article Nine Transactions which have benefited him and Grupo México at the expense of the Company.

123. Further, García de Quevedo is Southern Copper's COO. Between 2006 and 2014, García de Quevedo received approximately \$9.5 million in total compensation for his service in various executive roles at Southern Copper.⁵¹ If he were to initiate and prosecute claims adverse to the interests of Grupo México, he would likely be removed from any executive role at the Company, imperiling his principal source of employment and income.

124. *Defendant Palomino* cannot independently and disinterestedly consider a demand to investigate or prosecute the claims alleged herein. Palomino has repeatedly demonstrated his lack of independence from Grupo México as a

⁵¹ García de Quevedo's compensation for serving in executive roles at Southern Copper was \$868,870 (2006), \$621,817 (2007), \$598,302 (2008), \$1,042,600 (2009), \$955,290 (2010), \$886,781 (2011), \$1,270,514 (2012), \$1,393,913 (2013), and \$1,916,012 (2014).

member of the Southern Copper Board and its Audit Committee. As a member of the Audit Committee, Palomino was tasked with undertaking the prior review of material related-party transactions as required by Article Nine during the relevant time period. However, at least from 2006 through the first quarter of 2017, Palomino and the Audit Committee allowed Southern Copper to enter into dozens of material related-party transactions that violated Article Nine's prior independent review requirement. Indeed, Palomino was a member of the Audit Committee that failed to subject the transactions that were the subject of Power Plant Litigation to the prior review required under Article Nine. Furthermore, Palomino was a member of the special committee that approved Southern Copper's purchase of Minera by Grupo México, a transaction so unfair to Southern Copper that it resulted in a judgment of over \$2 billion against Grupo México and its affiliated directors for breaching their fiduciary duties. Palomino's repeated failure to act independently of Grupo México undermines any notion that he could be trusted to independently and disinterestedly determine whether to initiate and prosecute claims relating to the Article Nine Transactions.

125. *Defendant Pérezalonso* has served as a member of the Southern Copper Board and a member of its Audit Committee since June 2002. Pérezalonso has repeatedly demonstrated his lack of independence from Grupo México as a member of the Southern Copper Board and the Audit Committee. Pérezalonso was

a member of the Audit Committee that was tasked with undertaking the prior review of material related-party transactions as required by Article Nine during the relevant time period. However, at least from 2006 through the first quarter of 2017, Pérezalonso and the Audit Committee allowed Southern Copper to enter into dozens of material related-party transactions that violated Article Nine's prior independent review requirement. Indeed, Pérezalonso was a member of the Audit Committee that failed to subject the transactions that were the subject of Power Plant Litigation to the prior review required under Article Nine. Pérezalonso was also a member of the special committee that approved Southern Copper's purchase of Minera by Grupo México, a transaction so unfair to Southern Copper that it resulted in a judgment of over \$2 billion against Grupo México. Pérezalonso's repeated failure to act independently of Grupo México undermines any notion that he could be trusted to independently and disinterestedly determine whether to initiate and prosecute claims relating to the Article Nine Transactions.

126. *Defendant Castillo Sánchez Mejorada* is also incapable of independently and disinterestedly considering a demand to investigate or prosecute claims arising from the Article Nine Transactions. Castillo Sánchez Mejorada has repeatedly demonstrated his lack of independence from Grupo México as a member of the Southern Copper Board and Audit Committee. Since 2013, he has served on the Audit Committee tasked with undertaking the prior independent review of

material related-party transactions with Grupo México. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Castillo Sánchez Mejorada’s repeated failure to act independently of Grupo México undermines any notion that he could independently and disinterestedly determine whether to initiate and prosecute claims relating to the Article Nine Transactions.

127. Thus, a majority of the ten-member Demand Board is incapable of objectively and disinterestedly considering a demand to investigate or prosecute the derivative claims alleged herein, and demand on the Demand Board is excused as futile.⁵²

IV. DEMAND IS EXCUSED BECAUSE A MAJORITY OF THE DEMAND BOARD KNOWINGLY VIOLATED ARTICLE NINE AND THUS FACES A SUBSTANTIAL LIKELIHOOD OF LIABILITY

128. Eight members of the ten-member Demand Board—Defendants Germán Larrea, González Rocha, Casar Pérez, García de Quevedo, Palomino,

⁵² [REDACTED]

Pérezalonso, Ruiz Sacristán and Castillo Sánchez Mejorada—violated Article Nine in connection with some or all of the Article Nine Transactions. Indeed, during discovery in the Power Plant Litigation, [REDACTED]

[REDACTED] Thus, a majority of the Demand Board knowingly and repeatedly breached an express and unambiguous provision of Southern Copper’s Charter, and therefore face a substantial likelihood of liability on the Article Nine Transactions.

129. In these circumstances, Demand on the Demand Board is excused as futile.⁵⁴

[REDACTED]

⁵⁴ Additionally, Demand is excused because the Article Nine Transactions were not a valid exercise of business judgment. Indeed, as described *supra* at ¶¶ 50-102, none of the Article Nine Transactions were the product of arms-length negotiation and all were entered into on terms unfair to Southern Copper.

V. DEMAND IS EXCUSED AS A MATTER OF LAW BECAUSE EACH OF THE ARTICLE NINE TRANSACTIONS IS SUBJECT TO ENTIRE FAIRNESS REVIEW

130. Grupo México and the Demand Board's conduct in connection with each of the Article Nine Transactions is subject to review under the entire fairness standard of review.

131. As detailed *supra* at ¶¶ 31-39, Grupo México is the Company's controlling stockholder and stood on both sides of each of the Article Nine Transactions. As of December 31, 2018, Grupo México owns 88.9% of Southern Copper's common stock, through its American subsidiary AMC, and dominates the Company's boardroom and executive offices. Indeed, as discussed *supra* at ¶¶ 36-38, Southern Copper concedes in its public filings that Grupo México controls all facets of the Company's operations. Moreover, Grupo México exerted *actual* control in connection with the Article Nine Transactions.

COUNT I

DERIVATIVE CLAIM FOR BREACH OF CONTRACT AGAINST THE DIRECTOR DEFENDANTS

132. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

133. Under Delaware law, the certificate of incorporation of a corporation constitutes a multi-party contract among the corporation, the directors and officers of the corporation, and the stockholders of the corporation.

134. The process culminating in each of the contracts underlying: (i) the construction of the New BDC Tailings Dam; (ii) the construction of Phase 2 of Dam 7; (iii) the demolition and restoration of the Former IMMSA Metallurgical Complex; (iv) the Minerals Contracts; and (v) the Transportation Contracts violated Article Nine of the Company's Charter.

135. Article Nine is an essential and indispensable part of the Charter, and was included for the protection of Southern Copper and its minority stockholders from an abuse of power by Grupo México, the Company's controlling stockholder.

136. The challenged contracts underlying the Article Nine Transactions were unfair and caused significant damage to the Company.

137. The Company has no adequate remedy at law.

COUNT II

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

138. The Director Defendants violated Article Nine of the Company's Charter as Southern Copper directors and officers, and owe the Company the utmost fiduciary duties of due care and loyalty. By virtue of their positions as directors and/or officers of Southern Copper and/or their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants have, and at all relevant times had, the power to control and influence, and did control and influence, the Company, and caused it to engage in the practices

complained of herein. Each of the Director Defendants was required to, among other things: (i) use their ability to control and manage Southern Copper in a fair, just, and equitable manner; and (ii) act in furtherance of the best interests of Southern Copper and its stockholders, and not in furtherance of their own interests or others' interests.

139. The Director Defendants breached their fiduciary duties by failing to safeguard the Company's interests in the face of the clearly conflicted Article Nine Transactions and/or elevating the interests of Grupo México over Southern Copper in connection with those transactions.

140. The Director Defendants breached their fiduciary duties in connection with the Article Nine Transactions by, among other things, failing to: (i) conduct an arms-length process before awarding each of the contracts concerning the Article Nine Transactions to Grupo México affiliates and/or subsidiaries; (ii) approve each of the contracts underlying each of the related-party transactions by a committee of independent directors of Southern Copper in accordance with Article Nine of the Company's Charter; and (iii) inform themselves of all material information concerning each of the Article Nine Transactions by retaining experienced and qualified legal and/or financial advisors to advise the Southern Copper Board as to the fairness of each of the contracts underlying the Article Nine Transactions.

141. The Director Defendants' breaches of fiduciary duty caused the Company to enter into the unfair Article Nine Transactions, causing the Company significant financial harm.

142. Plaintiff has no adequate remedy at law.

COUNT III

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST GRUPO MÉXICO AS SOUTHERN COPPER'S CONTROLLING STOCKHOLDER

143. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

144. As detailed herein, Grupo México is Southern Copper's majority and controlling stockholder and was Southern Copper's majority and controlling stockholder at all relevant times alleged herein. As a controlling stockholder of a Delaware corporation, Grupo México owed and owes the Company and its minority stockholders the utmost fiduciary duties of due care and loyalty.

145. Grupo México caused Southern Copper to award each of the contracts underlying the Article Nine Transactions directly to Grupo México subsidiaries and/or affiliates without the parties undertaking an arms-length process and in violation of Article Nine of the Company's Charter.

146. The contracts (and their amendments) underlying the construction of the New BDC Tailings Dam were not the product of arms-length negotiation and

bargaining between Southern Copper and Grupo México, and resulted in unfair terms to Southern Copper.

147. The contract (and its amendments) underlying the construction of Phase 2 of Dam 7 was not the product of arms-length negotiation and bargaining between Southern Copper and Grupo México and resulted in unfair terms to Southern Copper.

148. The contracts (and their amendments) underlying the demolition and restoration of the Former IMMSA Metallurgical Complex were not the product of arms-length negotiation and bargaining between Southern Copper and Grupo México, and resulted in unfair terms to Southern Copper.

149. The contracts underlying the Minerals Contracts were not the product of arms-length negotiation and bargaining between Southern Copper and Grupo México, and resulted in unfair terms to Southern Copper.

150. The contracts underlying the Transportation Contracts were not the product of arms-length negotiation and bargaining between Southern Copper and Grupo México, and resulted in unfair terms to Southern Copper.

151. Southern Copper has been harmed by Grupo México's [REDACTED] breaches of fiduciary duty in causing the Company to enter into each of the unfair Article Nine Transactions.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

- A. Finding that demand on the Demand Board is excused as futile;
- B. Finding the Director Defendants liable for breach of contract in connection with each of the Article Nine Transactions;
- C. Finding the Director Defendants liable for breaching their fiduciary duties in connection with each of the Article Nine Transactions;
- D. Finding Grupo México, in its capacity as controlling stockholder of Southern Copper, liable for breaching its fiduciary duties owed to Southern Copper;
- E. Requiring Southern Copper to improve its corporate governance practices and/or change the composition of the Board to better protect the Company and its stockholders from the undue influence of Grupo México;
- F. Awarding the Company damages, together with pre- and post-judgment interest;
- G. Awarding Plaintiff the costs, expenses, and disbursements of this action, including all reasonable attorneys', accountants' and experts' fees; and
- H. Awarding such other and further relief as is just and equitable.

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Dated: April 24, 2019

PUBLIC VERSION FILED:

April 29, 2019